

Remarks

Status of Claims

Applicant has cancelled Claims 1-27. Applicant has added new claims consistent with previous restriction requirement electing Claims where the reflective elements are dispersed throughout a layer. No new matter has been added by Claims 28-37 and support for new Claims 28-37 can be found throughout the specification, on pages 6-7, pages 9-12, and pages 13-14.

Argument

I. Examiner's Characterization of Applicant's Discussion of the Prior Art ("ADPA") is Legally Inappropriate

The Applicant objects the Examiner's use of the ADPA. "To protect the inventor from hindsight reasoning, the time is specified to be the time when the invention was made." *In re Kahn* 441 F.3d 977, 986 (Fed. Cir. 2006). The ADPA was stated in an Office Action response to a Restriction Requirement and filed on September 20, 2006. The response did not indicate when the alternate reflective material may be available to one skilled in the art. For the Examiner to presume that the alternate reflective material to be readily available at the time the invention was made, is going outside the factual evidence required by and set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), which reprises the scope and contents of the prior art at the time the invention was made. The current application was filed on February 19, 2002, so the scope and contents of the prior art must be determined on February 19, 2002. And the Applicant made no statement labeling such alternative reflective material as prior art. Therefore, the Examiner inappropriately used Applicant's response filed September 20, 2006 to render Claims 1, 2, 4, 7, 9-12, 14-18 obvious. Applicant respectfully requests new Claims 27-38 to be examined accordingly.

II. Examiner's Rejection of Claims 1, 2, 4, 7, and 9-12 over Hines, Edgel, or Hunter in view ADPA

The new Claims 28-37 are not anticipated nor rendered obvious by Hines, Edgel, or Hunter in view of the ADPA. Applicant has cancelled Claims 1, 2, 4, 7, and 9-12 and added new Claims 28-37. Hines, Edgel, or Hunter do not contain each and every limitation of the newly

added Claims 28-37. Accordingly, every element of the claimed invention is not disclosed in Hines, Edgel, or Hunter references. Consequently, the Hines, Edgel, or Hunter references do not anticipate any claims in the present application and the Applicant respectfully requests withdrawal of the rejection.

III. Examiner's Rejection of Claim 13 under 35 USC §103(a) as being unpatentable over Hines, Edgel, or Hunter in view of ADPA and Sheridan is Legally Inappropriate

Applicant's new Claim 32 is not rendered obvious by Sheridan. The Examiner has stated that the combination of Hines, Edgel, or Hunter discloses the invention substantially as in Claim 13, and that Sheridan teaches that one can apply a black coating to desired sections of an enveloped heat insulating pad containing spaced interior elements in order to improve heat radiating characteristics of the pad. Office Action Page 5, lines 5-10. Applicant has cancelled Claim 13 and added Claim 32 in its place. And, the Sheridan reference is a heat reflecting shield and a heat sink for dissipating heat, i.e. reducing the temperature on a site of the pad facing away from the heat source to a lower temperature. Col. 5, lines 27-39. Moreover, the heat radiating means is disclosed to include a black surface, to radiate 95% of the heat, i.e. in areas at which it is desired to radiate heat away from the pad, i.e. heat sink area 4. Col. 7, lines 40-52. Such a disclosure does not render Claim 32 obvious, as Claim 32 requires a substantially dark color enhancing the ability of the top of the outer layer to absorb ambient heat into said blanket. Not only does Sheridan neither teach nor suggest such functional limitation, but Sheridan explicitly teaches away from placing dark color to absorb ambient into said blanket, i.e. Sheridan discusses a black surface in areas to radiate heat away from the pad. As such, Sheridan is legally insufficient to render Claim 32 obvious, by way of not containing each and every limitation and teaching away from Claim 32's elements.

IV. Examiner's Rejection of Claims 1, 2, 4, 9-12, 14, and 18 over Brockhaus, Handwerker, or Aanestad in view of ADPA

The new Claims 28-37 are not anticipated nor rendered obvious by Hines, Edgel, or Hunter in view of the ADPA. Applicant has cancelled Claims 1, 2, 4, 9-12, 14 and 18 and added new Claims 28-37. Hines, Edgel, or Hunter do not contain each and every limitation of the

newly added Claims 28-37. Accordingly, every element of the claimed invention is not disclosed in Hines, Edgel, or Hunter references. Consequently, the Hines, Edgel, or Hunter references do not anticipate any claims in the present application and the Applicant respectfully requests withdrawal of the rejection.

V. Examiner's Rejection of Claim 13 under 35 USC §103(a) as being as being unpatentable over Brockhaus, Handwerker, or Aanestad in view of ADPA and Sheridan

Applicant's new Claim 32 is not rendered obvious by Sheridan. The Examiner has stated that the combination of Brockhaus, Handwerker, or Aanestad in view of ADPA and Sheridan discloses the invention substantially as in Claim 13, and that Sheridan teaches that one can apply a black coating to desired sections of an enveloped heat insulating pad containing spaced interior elements in order to improve heat radiating characteristics of the pad. Office Action Page 5, lines 5-10. Applicant has cancelled Claim 13 and added new Claim 32 in its place. The Sheridan reference is a heat reflecting shield and a heat sink for dissipating heat, i.e. reducing the temperature on a site of the pad facing away from the heat source to a lower temperature. Col. 5, lines 27-39. Moreover, the heat radiating means is disclosed to include a black surface, to radiate 95% of the heat, i.e. in areas at which it is desired to radiate heat away from the pad, i.e. heat sink area 4. Col. 7, lines 40-52. Such a disclosure does not render Claim 32 obvious, as Claim 32 requires a substantially dark color enhancing the ability of the top of the outer layer to absorb ambient heat into said blanket. Not only does Sheridan neither teach nor suggest such functional limitation, but Sheridan explicitly teaches away from placing dark color to absorb ambient into said blanket, i.e. Sheridan discusses a black surface in areas to radiate heat away from the pad. As such, Sheridan is legally insufficient to render Claim 32 obvious, by way of not containing each and every limitation and teaching away from Claim 32's elements.

Conclusion

In light of the preceding discussion, Applicant submits the following claims 28-37 contain patentable subject matter. On this basis, Applicant respectfully submits that the Examiner should allow such claims.

No fees are believed due with this Response, however, the Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000. Should the Examiner require any further information or wish to discuss an aspect of this Response; the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,



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